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# **HOUSE . . . . . No. 3845**

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## **The Commonwealth of Massachusetts**

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INITIATIVE PETITION OF EDWARD J. MARKEY AND OTHERS.

OFFICE OF THE SECRETARY.  
BOSTON, JANUARY 1, 2014.

Steven T. James  
*Clerk of the House of Representatives*  
State House  
Boston, Massachusetts 02133

Sir: — I herewith transmit to you, in accordance with the requirements of Article XLVIII of the Amendments to the Constitution, an Initiative Petition for Law entitled “An Act Relative to Earned Sick Time” signed by ten qualified voters and filed with this department on or before December 4, 2013, together with additional signatures of qualified voters in the number of 84,682, being a sufficient number to comply with the Provisions of said Article.

Sincerely,

WILLIAM FRANCIS GALVIN,  
*Secretary of the Commonwealth.*

### AN INITIATIVE PETITION.

Pursuant to Article XLVIII of the Amendments to the Constitution of the Commonwealth, as amended, the undersigned qualified voters of the Commonwealth, ten in number at least, hereby petition for the enactment into law of the following measure:

**The Commonwealth of Massachusetts**

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In the Year Two Thousand and Fourteen.

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An Act relative to earned sick time.

*Be it enacted by the People, and by their authority, as follows:*

- 1 SECTION 1. Chapter 149 of the General Laws is hereby amended  
2 by inserting after section 148B the following two sections:-  
3 Section 148C. (a) As used in this section and section 148D, the  
4 following words, unless the context clearly requires otherwise,  
5 shall have the following meanings:-  
6 “Child”, a biological, adopted, or foster child, a stepchild, a  
7 legal ward, or a child of a person who has assumed the  
8 responsibilities of parenthood.  
9 “Earned paid sick time”, the time off from work that is  
10 provided by an employer to an employee as computed under  
11 subsection (d) that can be used for the purposes described in  
12 subsection (c) and is compensated at the same hourly rate as the

13 employee earns from the employee’s employment at the time the  
14 employee uses the paid sick time; provided, however, that this  
15 hourly rate shall not be less than the effective minimum wage  
16 under section 1 of chapter 151.

17 “Earned sick time”, the time off from work that is provided  
18 by an employer to an employee, whether paid or unpaid, as  
19 computed under subsection (d) that can be used for the purposes  
20 described in subsection (c).

21 “Employee”, any person who performs services for an  
22 employer for wage, remuneration, or other compensation, except  
23 that employees employed by cities and towns shall only be  
24 considered Employees for purposes of this law if this law is  
25 accepted by vote or by appropriation as provided in Article CXV  
26 of the Amendments to the Constitution of the Commonwealth.

27 “Employer”, any individual, corporation, partnership or  
28 other private or public entity, including any agent thereof, who  
29 engages the services of an employee for wages, remuneration or  
30 other compensation, except the United States government shall not

31 be considered an Employer and cities and towns shall only be  
32 considered Employers for the purposes of this law if this law is  
33 accepted by vote or by appropriation as provided in Article CXV  
34 of the Amendments to the Constitution of the Commonwealth.

35 “Health care provider”, the meaning given this term by the  
36 Family and Medical Leave Act of 1993, 29 U.S.C. sections 2601 to  
37 2654, inclusive, as it may be amended and regulations promulgated  
38 thereunder.

39 “Parent”, a biological, adoptive, foster or step-parent of an  
40 employee or of an employee’s spouse; or other person who  
41 assumed the responsibilities of parenthood when the employee or  
42 employee’s spouse was a child.

43 “Spouse”, the meaning given this term by the marriage  
44 laws of the commonwealth.

45 (b) All employees who work in the commonwealth who  
46 must be absent from work for the reasons set forth in subsection (c)  
47 shall be entitled to earn and use not less than the hours of earned  
48 sick time provided in subsection (d).

49           (c) Earned sick time shall be provided by an employer for  
50 an employee to:

51                   (1) care for the employee's child, spouse, parent, or  
52 parent of a spouse, who is suffering from a physical or mental  
53 illness, injury, or medical condition that requires home care,  
54 professional medical diagnosis or care, or preventative medical  
55 care; or

56                   (2) care for the employee's own physical or mental  
57 illness, injury, or medical condition that requires home care,  
58 professional medical diagnosis or care, or preventative medical  
59 care; or

60                   (3) attend the employee's routine medical  
61 appointment or a routine medical appointment for the employee's  
62 child, spouse, parent, or parent of spouse; or

63                   (4) address the psychological, physical or legal  
64 effects of domestic violence as defined in subsection (g 1/2) of  
65 section 1 of chapter 151A, except that the definition of employee  
66 in subsection (a) will govern for purposes of this section.

67 (d) (1) An employer shall provide a minimum of one hour of  
68 earned sick time for every thirty hours worked by an employee.  
69 Employees shall begin accruing earned sick time commencing with  
70 the date of hire of the employee or the date this law becomes  
71 effective, whichever is later, but employees shall not be entitled to  
72 use accrued earned sick time until the 90th calendar day following  
73 commencement of their employment. On and after this 90 day  
74 period, employees may use earned sick time as it accrues.

75 (2) Nothing in this chapter shall be construed to discourage  
76 or prohibit an employer from allowing the accrual of earned sick  
77 time at a faster rate, or the use of earned sick time at an earlier  
78 date, than this section requires.

79 (3) Employees who are exempt from overtime requirements  
80 under 29 U.S.C. section 213(a)(1) of the Federal Fair Labor  
81 Standards Act shall be assumed to work 40 hours in each work  
82 week for purposes of earned sick time accrual unless their normal  
83 work week is less than 40 hours, in which case earned sick time  
84 shall accrue based on that normal work week.

85 (4) All employees employed by an employer of eleven or more  
86 employees shall be entitled to earn and use up to 40 hours of  
87 earned paid sick time from that employer as provided in subsection  
88 (d) in a calendar year. In determining the number of employees  
89 who are employed by an employer for compensation, all  
90 employees performing work for compensation on a full-time, part-  
91 time or temporary basis shall be counted.

92 (5) Notwithstanding section 17 of chapter 15D, sections 70-75 of  
93 chapter 118E, or any other special or general law to the contrary,  
94 the PCA Quality Home Care Workforce Council shall be deemed  
95 the Employer of all Personal Care Attendants, as defined in section  
96 70 of chapter 118E, for purposes of subsection (d)(4) of this  
97 section, the Department of Medical Assistance shall be deemed the  
98 Employer of said Personal Care Attendants for all other purposes  
99 under this section, and the Department of Early Education and  
100 Care shall be deemed the Employer of all Family Child Care  
101 Providers, as defined in section 17(a) of chapter 15D, for purposes  
102 of this section.

103 (6) All employees not entitled to earned paid sick time from an  
104 employer pursuant to subsection (d)(4)-(5) shall be entitled to earn  
105 and use up to 40 hours of earned unpaid sick time from that  
106 employer as provided in subsection (d) in a calendar year.

107 (7) Earned sick time shall be used in the smaller of hourly  
108 increments or the smallest increment that the employer's payroll  
109 system uses to account for absences or use of other time.

110 Employees may carry over up to 40 hours of unused earned sick  
111 time to the next calendar year, but are not entitled to use more than  
112 40 hours in one calendar year. Employers shall not be required to  
113 pay out unused earned sick time upon the separation of the  
114 employee from the employer.

115 (e) If an employee is absent from work for any reason listed  
116 in subsection (c) and, by mutual consent of the employer and the  
117 employee, the employee works an equivalent number of additional  
118 hours or shifts during the same or the next pay period as the hours  
119 or shifts not worked due to reasons listed in subsection (c), an  
120 employee shall not be required to use accrued earned sick time for

121 the employee's absence during that time period and the employer  
122 shall not be required to pay for the time the employee was so  
123 absent. An employer shall not require such employee to work  
124 additional hours to make up for the hours during which the  
125 employee was so absent or require that the employee search for or  
126 find a replacement employee to cover the hours during which the  
127 employee is utilizing earned sick time.

128 (f) Subject to the provisions of subsection (n), an employer  
129 may require certification when an earned sick time period covers  
130 more than 24 consecutively scheduled work hours. Any  
131 reasonable documentation signed by a health care provider  
132 indicating the need for earned sick time taken shall be deemed  
133 acceptable certification for absences under subsection (c)(1), (2)  
134 and (3). Documentation deemed acceptable under subsection (g  
135 1/2) of section 1 of chapter 151A shall be deemed acceptable  
136 documentation for absences under subsection (c)(4). An employer  
137 may not require that the documentation explain the nature of the  
138 illness or the details of the domestic violence. The employer shall

139 not delay the taking of earned sick time or delay pay for the period  
140 in which earned sick time was taken for employees entitled to pay  
141 under subsection (d), on the basis that the employer has not yet  
142 received the certification. Nothing in this section shall be  
143 construed to require an employee to provide as certification any  
144 information from a health care provider that would be in violation  
145 of section 1177 of the Social Security Act, 42 U.S.C. 1320d-6, or  
146 the regulations promulgated under section 264(c) of the Health  
147 Insurance Portability and Accountability Act of 1996, 42 U.S.C.  
148 1320d-2 note.

149 (g) When the use of earned sick time is foreseeable, the  
150 employee shall make a good faith effort to provide notice of this  
151 need to the employer in advance of the use of the earned sick time.

152 (h) It shall be unlawful for any employer to interfere with,  
153 restrain, or deny the exercise of, or the attempt to exercise, any  
154 right provided under or in connection with this section, including,  
155 but not limited to, by using the taking of earned sick time under  
156 this section as a negative factor in any employment action such as

157 evaluation, promotion, disciplinary action or termination, or  
158 otherwise subjecting an employee to discipline for the use of  
159 earned sick time under this section.

160 (i) It shall be unlawful for any employer to take any  
161 adverse action against an employee because the employee opposes  
162 practices which the employee believes to be in violation of this  
163 section, or because the employee supports the exercise of rights of  
164 another employee under this section. Exercising rights under this  
165 section shall include but not be limited to filing an action, or  
166 instituting or causing to be instituted any proceeding, under or  
167 related to this section; providing or intending to provide any  
168 information in connection with any inquiry or proceeding relating  
169 to any right provided under this section; or testifying or intending  
170 to testify in any inquiry or proceeding relating to any right  
171 provided under this section.

172 (j) Nothing in this section shall be construed to discourage  
173 employers from adopting or retaining earned sick time policies  
174 more generous than policies that comply with the requirements of

175 this section and nothing in this section shall be construed to  
176 diminish or impair the obligation of an employer to comply with  
177 any contract, collective bargaining agreement, or any employment  
178 benefit program or plan in effect on the effective date of this  
179 section that provides to employees greater earned sick time rights  
180 than the rights established under this section.

181 (k) Employers required to provide earned paid sick time  
182 who provide their employees paid time off under a paid time off,  
183 vacation or other paid leave policy who make available an amount  
184 of paid time off sufficient to meet the accrual requirements of this  
185 section that may be used for the same purposes and under the same  
186 conditions as earned paid sick time under this section are not  
187 required by this section to provide additional earned paid sick  
188 time.

189 (l) The attorney general shall enforce this section, and may  
190 obtain injunctive or declaratory relief for this purpose. Violation of  
191 this section shall be subject to paragraphs (1), (2), (4), (6) and (7)  
192 of subsection (b) of section 27C and to section 150.

193           (m) The attorney general shall prescribe by regulation the  
194 employer's obligation to make, keep, and preserve records  
195 pertaining to this section consistent with the requirements of  
196 section 15 of chapter 151.

197           (n) The attorney general may adopt rules and regulations  
198 necessary to carry out the purpose and provisions of this section,  
199 including the manner in which an employee who does not have a  
200 health care provider shall provide certification, and the manner in  
201 which employer size shall be determined for purposes of  
202 subsection (d)(4).

203           (o) Notice of this section shall be prepared by the attorney  
204 general, in English and in other languages required under clause  
205 (iii) of subsection (d) of section 62A of chapter 151A. Employers  
206 shall post this notice in a conspicuous location accessible to  
207 employees in every establishment where employees with rights  
208 under this section work, and shall provide a copy to their  
209 employees. This notice shall include the following information:

- 210                   (1) information describing the rights to earned sick  
211 time under this section;
- 212                   (2) information about the notices, documentation  
213 and any other requirements placed on employees in order to  
214 exercise their rights to earned sick time;
- 215                   (3) information that describes the protections that an  
216 employee has in exercising rights under this section;
- 217                   (4) the name, address, phone number, and website  
218 of the attorney general’s office where questions about the rights  
219 and responsibilities under this section can be answered; and
- 220                   (5) information about filing an action under this  
221 section.

222           Section 148D. The executive office of health and human  
223 services, in consultation with the attorney general, shall develop  
224 and implement a multilingual outreach program to inform  
225 employees, parents, and persons who are under the care of a health  
226 care provider about the availability of earned sick time under this  
227 section. This program shall include the distribution of notices and

228 other written materials in English and in other languages to all  
229 child care and elder care providers, domestic violence shelters,  
230 schools, hospitals, community health centers, and other health care  
231 providers.

232 SECTION 2. Section 150 of chapter 149 is hereby amended by  
233 inserting after the word “148B”, the following word:- , 148C.

234 SECTION 3. If any provision of this act or application thereof to  
235 any person or circumstance is judged invalid, the invalidity shall  
236 not affect other provisions or applications of the act which can be  
237 given effect without the invalid provision or application, and to  
238 this end the provisions of this act are declared severable.

239 SECTION 4. This act shall take effect on July 1, 2015.

## FIRST TEN SIGNERS

<u>NAME</u>	<u>RESIDENCE</u>	<u>CITY OR TOWN</u>
Edward J. Markey	7 Townsend Street	Malden
Steven Tolman	17 Madeline Street	Boston
Veronica Turner	397 Prospect Street	Brockton
Linda Mae Pittsley	301 Milliken Boulevard, #701	Fall River
Jeremiah J. Donovan	138 Albion Street	Fall River
Sandra M. Pineros-Shields	64 Highland Avenue, #2	Salem
Emily Rodriguez	503 White Street	Springfield
Jeffrey L. Brown	34 Tremlett Street	Boston
Joaquim Jack Livramento	384 Purchase Street	New Bedford
Jane Soyster Gould	80 Ocean Street	Lynn

### Summary of 13-07.

This proposed law would entitle employees in Massachusetts to earn and use sick time according to certain conditions.

Employees who work for employers having eleven or more employees could earn and use up to 40 hours of paid sick time per calendar year, while employees working for smaller employers could earn and use up to 40 hours of unpaid sick time per calendar year.

An employee could use earned sick time if required to miss work in order (1) to care for a physical or mental illness, injury or medical condition affecting the employee or the employee's child, spouse, parent, or parent of a spouse; (2) to attend routine medical appointments of the employee or the employee's child, spouse, parent, or parent of a spouse; or (3) to address the effects of domestic violence on the employee or the employee's dependent child. Employees would earn one hour of sick time for every 30 hours worked, and would begin accruing those hours on the date of hire or on July 1, 2015, whichever is later. Employees could begin to use earned sick time on the 90th day after hire.

The proposed law would cover both private and public employers, except that employees of a particular city or town would be covered only if, as required by the state constitution, the proposed law were made applicable by local or state legislative vote or by appropriation of sufficient funds to pay for the benefit. Earned paid sick time would be compensated at the same hourly rate paid to the employee when the sick time is used.

Employees could carry over up to 40 hours of unused sick time to the next calendar year, but could not use more than 40 hours in a calendar year. Employers would not have to pay employees for unused sick time at the end of their employment. If an employee missed work for a reason eligible for earned sick time, but agreed with the employer to work the same number of hours or shifts in the same or next pay period, the employee would not have to use earned sick time for the missed time, and the employer would not have to pay for that missed time. Employers would be prohibited from requiring such an employee to work additional hours to make up for missed time, or to find a replacement employee.

Employers could require certification of the need for sick time if an employee used sick time for more than 24 consecutively scheduled work hours. Employers could not delay the taking of or payment for earned sick time because they have not received the certification. Employees would have to make a good faith effort to notify the employer in advance if the need for earned sick time is foreseeable.

Employers would be prohibited from interfering with or retaliating based on an employee's exercise of earned sick time rights, and from retaliating based on an employee's support of another employee's exercise of such rights.

The proposed law would not override employers' obligations under any contract or benefit plan with more generous provisions than those in the proposed law. Employers that have their own policies providing as much paid time off, usable for the same purposes and under the same conditions, as the proposed law would not be required to provide additional paid sick time.

The Attorney General would enforce the proposed law, using the same enforcement procedures applicable to other state wage laws, and employees could file suits in court to enforce their earned sick time rights. The Attorney General would have to prepare a multilingual notice regarding the right to earned sick time, and employers would be required to post the notice in a conspicuous location and to provide a copy to employees. The state Executive Office of Health and Human Services, in consultation with the Attorney General, would develop a multilingual outreach program to inform the public of the availability of earned sick time.

The proposed law would take effect on July 1, 2015, and states that if any of its parts were declared invalid, the other parts would stay in effect.

## CERTIFICATE OF THE ATTORNEY GENERAL.

September 4, 2013.

Honorable William Francis Galvin  
*Secretary of the Commonwealth*  
One Ashburton Place, Room 1705  
Boston, Massachusetts 02108

RE: Initiative Petition No. 13-07: Law Relative to Earned Sick Time.

Dear Secretary Galvin:

In accordance with the provisions of Article 48 of the Amendments to the Massachusetts Constitution, I have reviewed the above-referenced initiative petition, which was submitted to me on or before the first Wednesday of August of this year.

I hereby certify that this measure is in proper form for submission to the people; that the measure is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections; and that it contains only subjects that are related or are mutually dependent and which are not excluded from the initiative process pursuant to Article 48, the Initiative, Part 2, Section 2.

In accordance with Article 48, I enclose a fair, concise summary of the measure.

Sincerely,

MARTHA COAKLEY,  
*Attorney General.*